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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x		**ECF CASE**
ASSOCIATED PRESS,	:	
	:	
Plaintiff,	:	DECLARATION OF
	:	TERESA A. MCPALMER
- v.-	:	
	:	05 Civ. 3941 (JSR)
	:	
UNITED STATES DEPARTMENT	:	
OF DEFENSE,	:	
	:	
Defendant.	:	
- -x		

COMMANDER TERESA A. MCPALMER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

Associated Press v. United States Department of Defense Doc. 11

1. I am a member of the Judge Advocate General's Corps of the United States Navy and the Legal Advisor to the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC) at the U.S. Naval Base Guantanamo Bay, Cuba. In that capacity, I am an advisor to the Director, Combatant Status Review Tribunals. The primary legal advisor to the Director, Combatant Status Review Tribunals, Commander James R. Crisfield, JAGC, U.S. Navy, left OARDEC in early April 2005, at which point I assumed his role in addition to my role as the legal advisor to the Administrative Review Boards. The

statements in this declaration are based upon personal knowledge and information obtained by me in the course of my official duties.

2. The purpose of this declaration is (i) to describe the search for documents OARDEC conducted in response to plaintiff's November 4, 2004 request under the Freedom of Information Act (FOIA), and (ii) to confirm, in response to a request by plaintiff, that the transcripts produced to plaintiff are the only transcripts of detainee testimony before the Combatant Status Review Tribunals (CSRTs) that the Department of Defense (DOD) has generated.

OARDEC's Search for Responsive Documents

3. DOD maintains separate files for each CSRT. Those files are maintained at OARDEC headquarters in Arlington, Virginia. OARDEC is a component of DOD and is responsible for conducting CSRTs and Administrative Review Boards (ARBs) on the detainees held by DOD at the U.S. Naval Base, Guantanamo Bay, Cuba. All of the documents requested in plaintiff's FOIA request are contained in the CSRT files in OARDEC's Virginia office.

4. To search for documents responsive to the FOIA request, a member of OARDEC's legal staff started reviewing OARDEC's files in January, 2005, before all the CSRTs were completed. At the same time, however, we were required to continue performing the essential legal missions of conducting legal sufficiency reviews for the CSRTs and ARBs, and providing day-to-day legal advice to OARDEC, as well as responding to FOIA requests in the queue ahead of plaintiff's and preparing factual returns to be submitted in detainee habeas litigation, all of which were very time-consuming jobs. In April, 2005, after the CSRTs were completed, this staff member and a second member of the OARDEC legal staff continued to

search every file and retrieve responsive documents. As of that April, 2005 search, CSRTs for every detainee under DOD control at the U.S. Naval Base Guantanamo Bay, Cuba, had been completed. Accordingly, files pertaining to every CSRT ever conducted were reviewed.

5. Both legal staff members who performed the search for responsive documents work under my direct control and supervision. In January 2005, the staff member who began the search for responsive documents was working under the supervision of my predecessor, Commander James R. Crisfield.

6. When our staff members found responsive documents, those documents were pulled from the file, copied, and set aside for further review to determine whether any portions of them were subject to any FOIA exemption.

7. Some detainees refused to participate in the CSRT hearing process. In such cases, there is no transcript of the detainee's testimony. As a result, while DOD has produced all documents that are responsive to plaintiff's request for "[t]ranscripts of all testimony given to any Combatant Status Review Tribunal (CSRT) by any detainee at the U.S. Naval Base, Guantanamo Bay, Cuba since July 30, 2004," fewer transcripts were produced than the total number of detainees who had CSRTs at Guantanamo. Similarly, not every detainee provided "written statements" to the CSRTs, or documents to his personal representative, the two other categories of documents requested in plaintiff's FOIA request.

The Transcripts Provided to Plaintiff Are the Only Transcripts of Detainee Testimony Generated by DOD

8. The July 7, 2004 order of the Deputy Secretary of Defense establishing the CSRTs did not require the creation of a verbatim transcript of testimony before the CSRTs, but rather that the Recorder for each Tribunal create a "summary of all witness testimony." See July

7, 2004 Order of the Deputy Secretary of Defense Establishing Combatant Status Review Tribunal (copy attached to accompanying Declaration of Karen L. Hecker and available at defenselink.mil/news/Jul2004/d20040707review.pdf). The Recorder is a military officer responsible for presenting to the Tribunal the government's evidence as to the factual basis for the detainee's classification as an enemy combatant, and any evidence that suggests that the detainee should not be so classified. The transcripts provided to plaintiff are the summaries of testimony generated pursuant to that July 7, 2004 directive. These documents are accurate summaries of the testimony of detainees before the CSRTs. No other transcripts of testimony before the CSRTs have been generated by DOD.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 25, 2005.

Teresa A. McPalmer

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